

Under the Service Occupation Tax Act, servicemen are taxed on tangible personal property transferred as an incident to sales of service. See 86 Ill. Adm. Code 140.101. (This is a GIL.)

January 11, 1999

Dear Mr. Xxxxx:

This letter is in response to your letter dated October 22, 1998. The nature of your letter and the information you have provided require that we respond with a General Information Letter which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

Based on a conversation I had with someone in the Sales & Use Tax department at the IDOR I am requesting a letter ruling regarding a new situation that we are facing. We are a transaction mailing service. We laser print, insert into envelopes and mail companies' invoices and statements to their customers. Until now we have chosen to bear the sales tax burden for the materials that we use (i.e. paper & envelopes). However, we have decided recently that we need to begin passing this along to our customers.

The difficulty we are having is deciding when a customer should be charged tax. My understanding is that we have to charge our customers sales tax for materials that are delivered inside the state of Illinois. However, we are doing mass mailings and some of our customers' mail is distributed all over the U.S. and to foreign countries. Determining how much material will end up in Illinois and how much will not is extremely difficult. We are billing our customers for the materials at the time we purchase them, not as we consume it in the process of our service. So, at the point of billing we have no idea where the materials will end up.

I would appreciate your response in this matter. Please feel free to contact me at the telephone number listed below.

In general, when a company contracts for the production of custom printed marketing literature, a special order printing situation exists and liability is incurred under the Service Occupation Tax Act. See the enclosed copies of 86 Ill. Adm. Code 130.2000 and 140.101.

Under the Service Occupation Tax Act, servicemen are taxed on tangible personal property transferred as an incident to sales of service. The purchase of tangible personal property that is transferred to the service customer may result in either Service Occupation Tax liability or Use Tax liability for the

servicemen depending upon which tax base the servicemen choose to calculate their tax liability. The servicemen may calculate their tax base in one of four ways: (1) separately stated selling price of tangible personal property transferred incident to service; (2) 50% of the servicemen's entire bill; (3) Service Occupation Tax on the servicemen's cost price if the servicemen are registered de minimis servicemen; or (4) Use Tax on the servicemen's cost price if the servicemen are de minimis and are not otherwise required to be registered under the Retailers' Occupation Tax Act.

Using the first method, servicemen may separately state the selling price of each item transferred as a result of the sale of service. The tax is based on the separately stated selling price of the tangible personal property transferred. If the servicemen do not wish to separately state the selling price of the tangible personal property transferred, the servicemen must use 50% of the entire bill to the service customer as the tax base. Both of the above methods provide that in no event may the tax base be less than the servicemen's cost price of the tangible personal property transferred.

The third way servicemen may account for tax liability only applies to de minimis servicemen who have either chosen to be registered or are required to be registered because they incur Retailers' Occupation Tax liability with respect to a portion of their business. Serviceman may qualify as de minimis if the servicemen determine that the annual aggregate cost price of tangible personal property transferred as an incident of the sale of service is less than 35% of the servicemen's annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphic arts production). This class of registered de minimis servicemen is authorized to pay Service Occupation Tax (which includes local taxes) based upon the cost price of tangible personal property transferred incident to the sale of service. They remit the tax to the Department by filing returns and do not pay tax to suppliers. They provide suppliers with Certificates of Resale for the property transferred to service customers.

The final method of determining tax liability may be used by de minimis servicemen that are not otherwise required to be registered under the Retailers' Occupation Tax Act. Servicemen may qualify as de minimis if the servicemen determine that the annual aggregate cost price of tangible personal property transferred as an incident of the sale of service is less than 35% of the servicemen's annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphic arts production). Such de minimis servicemen may pay Use Tax to their suppliers or may self assess and remit Use Tax to the Department when making purchases from unregistered out-of-State suppliers. The servicemen are not authorized to collect "tax" from their service customer nor are the servicemen liable for Service Occupation Tax. It should be noted that servicemen no longer have the option of determining whether they are de minimis using a transaction by transaction basis.

Interstate sales may or may not be taxable to servicemen, depending upon which of the tax payment options is chosen. An exemption is available for servicemen paying Service Occupation Tax on property resold as an incident to a sale of service under an agreement by which the serviceman is obligated to make physical delivery of the goods from a point in this State to a point outside this

State, not to be returned to this State, provided such delivery is actually made. See 86 Ill. Adm. Code 140.501(b), enclosed. This exemption is not available for servicemen utilizing the final method described above.

I hope this information is helpful. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Gina Roccaforte
Associate Counsel

GR:msk
Enc.